

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.02.2017

C O R A M

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

Crl.O.P.No.24235 of 2016
in
Crl.A.Sr.No.20030 of 2016

Ziavulla Hussain

... Appellant/Complainant

Vs

K.Karunakaran

... Respondent/Accused

Prayer: Petition filed under Section 378 (4) Cr.P.C., praying to grant leave to file Criminal Appeal against the order passed in C.C.No.77 of 2007 dated 30.12.2015 on the file of the Judicial Magistrate No.1, Krishnagiri.

For Appellant : Mr.M.Balasubramanian

For Respondent : No appearance

ORDER

Heard the Learned Counsel for the Petitioner.

2. Service of Paper publication was effected in Tamil and English Dailies as directed by this Court as per order dated 23.01.2017. Respondent called absent. There is no representation on the side of the Respondent either in person or through Learned Counsel. In view of the publication being effected in Tamil and English Dailies, the service against the Respondent is held sufficient by this Court.

Preamble:

3. The Petitioner/Appellant/Complainant has focused the instant Criminal Original Petition praying for the 'Grant of Leave' to file Criminal Appeal as against the order dated 30.12.2015 in C.C.No.77 of 2007 passed by the Learned Judicial Magistrate No.I, Krishnagiri.

4. The Learned Judicial Magistrate No.I, Krishnagiri, while passing the impugned order in C.C.No.77 of 2007 on 30.12.2015, had, among other things, observed that 'on the side of the Petitioner/Appellant/Complainant no process fee was paid and also when the Petitioner/Complainant was called before Court, there was no representation on his side and further that he had not

appeared and since an Advocate had not appeared on behalf of the Petitioner/Complainant, a Non Bailable Warrant was issued against the Respondent/Accused. Furthermore, the NBW was pending from 27.07.2015 till date and no steps were taken on behalf of the Petitioner/Appellant/Complainant to produce the Respondent/Accused and in spite of sufficient time being granted to the Petitioner/Complainant, no steps were taken to produce the Respondent/Accused and also, no further steps were taken to conduct the case. Furthermore, on 30.12.2015, the Petitioner/Appellant/Complainant had not appeared continuously and there was no representation on his behalf. No steps were taken on the side of the Petitioner/Complainant to produce the Respondent/Accused before this Court, hence, in the interest of Justice and also in the interest of Court, the present case is dismissed'.

Contentions of the Petitioner/Complainant:

5. According to the Learned Counsel for the Petitioner/Appellant/Complainant, the Petitioner/Complainant filed the Complaint on 02.08.2008 under Section 138 of the Negotiable Instruments Act, 1881 and the same was taken on file on 14.03.2007.

6. In this connection, it is represented on behalf of the Petitioner/Complainant that the Respondent/Accused evaded service and a Bailable Warrant was issued and on 16.12.2013, the Respondent/Accused surrendered before the Court on 17.12.2013 and on being questioned, he denied the allegation and the case was adjourned for trial with a view to examine the witnesses concerned. Finally, on 30.06.2014 there was no representation on the side of the Respondent/Accused and that the trial Court was forced to issue a Bailable Warrant against him.

7. The Learned Counsel for the Petitioner/Complainant submits that the Respondent/Accused again surrendered on 02.07.2014 before the Court and later on 04.09.2015, the Petitioner/Complainant was present and was ready and on that day, the proof affidavit was filed and on the side of the Respondent/Accused, there was no representation and consequently, a Non Bailable Warrant was issued against the Respondent/Accused.

8. The Learned Counsel for the Petitioner/Appellant/Complainant submits that in the present case, the original cheque

was missing from the Court records and only for this prime reason the hearing of the main case in C.C.No.77 of 2007 was adjourned from time to time.

9.The emphatic stand of the Petitioner is that on 01.12.2015 he was present before the trial Court and since NBW was pending against the Respondent, on 30.12.2015, C.C.No.77 of 2007 was dismissed by the trial Court mainly on the ground that on behalf of the Petitioner/Appellant/Complainant, a process fee was not paid and also there was no representation on his side and also that, the Petitioner/Complainant had not appeared before the trial Court continuously and there was also no representation etc.

10.It is to be borne in mind that the High Court has requisite power to review at large the whole gamut of materials available on record in a given trial Court's case and while so doing, it will take into consideration the views of the trial Judge. Also that, in the present case, the trial Court had dismissed the main case, because of the reason that on behalf of the Petitioner/Appellant/Complainant, there was no representation in the main case in C.C.No.77 of 2007 and also that, no process fee was paid in regard

to the execution of NBW.

Birds Eye View of Negotiable Instruments Act:

11.It is to be noted that a case under Section 138 of the Negotiable Instruments Act, 1881 is in civil nature, but by introducing Section 138, a criminal colour is given. However, the intention of the legislature is to see that the concerned is made to pay the amount to the Payee. Indeed, the Complainant's interest lies primordial in recovering the money given rather than sending the Drawer of the Cheque to Jail. After all, the 'threat of Jail' is only a method for effecting a recovery.

12.No wonder, in respect of an offence under Section 138 of the Negotiable Instruments Act, so far as the Complainant is concerned, the punishment like that of other forms of crimes is not a method of seeking retribution, but it is only a mere for ensuring the Debt/Money So Lent/Advanced.

13.It cannot be ignored that an offence under Section 138 of the Negotiable Instruments Act does not involve a moral turpitude, as opined by this Court.

14. In respect of a traditional crime/offence a third party can be the Complainant, but in Section 138 of the Negotiable Instruments Act, a third party cannot step into the shoes of the Complainant, unless, he is given any 'Authorisation Letter' or 'Power of Attorney' as the case may be.

15. In so far as the Section 138 of the Negotiable Instruments Act, 1881, the same is not couched in precise language, in the considered opinion of this Court. The words 'another person' in Section 138 include both 'Payee' and 'Holder in Due Course', but not a mere 'Holder' or 'Endorsee' without consideration. Under Section 9 of the Negotiable Instruments Act, a 'Holder in Due Course' is an individual, who for consideration, is entitled to the possession of a Bearer Cheque or 'Payee' or 'Endorsee' thereof.

16. In reality, the word employed in Section 138 of the Negotiable Instruments Act viz., 'Drawn' 'Discharge of any Debt' or other Liability are conveying the legislature's message through which a Court of Law can very well appreciate the intention of legislature in the subject matter in issue.

17.It cannot be gainsaid that 'affixing signature' on blank Cheque cannot be said to be equivalent to the word 'Drawn' used in Section 138 of the Negotiable Instruments Act. Viewed in that perspective, the word 'Drawn' is to be understood as 'Execution of Cheque' as per decision ***G.Gopan V. Tonny Verghese*** reported ***in 2008 BC (III) 488 at page 499 : 2008 CrI.L.J. NOC 409.***

Crime & Offence:

18.In fact, a crime is essentially a wrong against the Society and the State. As such, any compromise between the Complainant and an Accused ought not to absolve the Accused from Criminal responsibility, if the offences are of private nature and not serious ones. It can be compounded, if it is punishable offences and in respect of others compoundable can be effected with the permission of the Court.

19.The term 'offence' has to be read and understood in the context as prescribed under Sections 40, 41, 42 I.P.C. which covered offences punishable under I.P.C. or under Special Law or local Law or as defined under Section 2(n) of Cr.P.C. or Section

3(38) of the General Clauses Act, 1897.

Maintainability of Complaint:

20.A Complainant is to file a Complaint Petition, since he is a 'Payee' as per Section 7 of the Negotiable Instruments Act, 1881 or a 'Holder in Due Course' in terms of Section 8 of the Act. Further, only a 'Payee' or 'Holder in Due Course' could be the Complainant when a Cheque was dishonoured. When a Complainant is not a 'Holder in Due Course', he cannot maintain a complaint.

21.In a Complaint under Section 138 of the Negotiable Instruments Act, the Complainant is having a very vital stake in the matter. Therefore, the Complaint ought not to be dismissed in a mechanical, routine or in a cavalier fashion.

Features of Cr.P.C.:

22.The word 'Complainant' is not defined under Cr.P.C., but it will mean an individual who is examined under Section 200 Cr.P.C. Also, the term 'offence' under Section 2(n) includes not only the doing of possible act, but by omitting to do something as well. Section 4(2) Cr.P.C. specifies that all offences under any other law other than I.P.C. shall be enquired into or tried

and otherwise deal with the provisions of the Court, subject to any other enactment which contemplates a different mode of trial for such offences. In fact, the non-obstante clause in Section 142 of the Negotiable Instruments Act speaks of three matters mentioned in Section, having an overriding effect on the provisions of Criminal Procedure Code. Apart from that, in exercise of Appellate Jurisdiction, a Court of Law has not only the power to rectify an error in the Judgment under Appeal but to make such disposal of the case, subject to equity, good conscience, fair play and Justice.

23.A cursory perusal of the term 'Complaint' as per Section 2(d) Cr.P.C. points out that it refers to mean any allegation made orally or in writing to a Magistrate. Undoubtedly, there is no express provision in Criminal Procedure Code or in the rules framed thereunder, however, complaint is to be drafted. Ordinarily, a Complainant need not to be an aggrieved person. An individual having knowledge of offence can file a complaint as per decision ***Gujral V. Emperor, AIR 1935 All 938***. If a case is registered in terms of Section 154 Cr.P.C., the 'State' will be the Prosecutor, the person whose information had led to the lodging of report is the 'Informant'.

Right of Appeal:

24.It is to be pointed out that 'Right of Appeal' is a substantive right and not a just matter of procedure, as opined by this Court. There is no inherent right of preferring an 'Appeal' is expressly provided for by the Law itself, as per decision of the Hon'ble Supreme Court in ***Durga Shanker Metha V. Raghuraj Singh, AIR 1954 SC 520 at page 522.*** No wonder, if the words of the statute are explicit, precise (admits of no exception) and an unambiguous one, then, it ought to have their natural and ordinary meaning.

25.It is to be remembered that the right of a 'Victim' to prefer an 'Appeal' (on limited grounds specified in Proviso to Section 372 Cr.P.C.) is a separate and independent statutory right. The said right is not special subservient to the right of Appeal of the State. In short, not only the 'State/Prosecuting Agency' as well as the 'Victim' can prefer Appeals independently without being dependant on the exercise of right by the other. It is to be noted that in case of more victims, each of such victim will have separate right of the Appeal.

Salient Features of Section 372 and 378(4) Cr.P.C.:

26. There is no two opinion of a vital fact with effect from 31.12.2009 Cr.P.C. (Amendment) Act (2008) 5 of 2009 confers a substantive right of Appeal against an order of acquittal on a victim. Indeed, an Appeal against acquittal lies before an Appellate Court by means of amendment to Section 372 Cr.P.C.

27. In this connection, this Court significantly points out that a 'Victim', who is not a Complainant in a private complaint case, is not entitled to prefer an Appeal against an acquittal under proviso to Section 372 Cr.P.C. and his right of Appeal is governed by un-amended provisions of Cr.P.C. read with Section 378(4) Cr.P.C., as per decision in ***Tata Steels Limited (M/s.) V. M/s. Atima Tube Products Limited, 2013(3) Crimes 613 (P&H) (DB)***.

28. Further, in the decision ***Top Notch Infotronics (I) Pvt. Ltd. V. Infosoft Systems, 2012(1) Bom (Cri) 805***, it is observed that 'an appeal against acquittal lies before the High

Court'. Moreover, in the decision of the Hon'ble Supreme Court in ***Subhash Chand V. State (Delhi Admn.) reported in AIR 2013 SC 395***, it is held that '***A Complainant can file an application for Special Leave to Appeal against an order of acquittal of any kind only to the High Court etc.***'

29.The words occurring in Section 378(4) Cr.P.C. 'any case instituted upon complaint' mean only those cases where not only the Complainant comes to Court with a petition of complaint, but the Magistrate takes cognizance of the offence or offences alleged on the basis of complaint, as per decision ***Osman Gani V. Baramdeo Singh, reported in (1959) 2 Cal. 13.***

30.As per Section 378(4) Cr.P.C., a private litigant can question an acquittal by way of Appeal to High Court, after obtaining Special Leave to Appeal as per decision ***N.G.Taya Wade (1958) 60 Bom. LR 1339.*** Section 378(4) Cr.P.C. applies to cases preferred on complaints in respect of I.P.C. offences as it does to complaints invoking any other offence under any special enactment.

31. When there is a miscarriage of Justice, a 'Leave' can be granted in respect of filing of an Appeal against the Order/Judgment of acquittal, as the case may be. Section 378 Cr.P.C. provides for preferring of Appeals in case of acquittal orders passed by the Subordinate Courts. By means of amendment provision in the year 1978, in case of acquittal order passed by the Court of Sessions in Revision, an Appeal can be filed. Added further, by virtue of Amendment Act, 2005, an Appeal against an order of acquittal passed by a Learned Judicial Magistrate in respect of a cognizable or non-bailable offence filed on a police report can be filed before the Court of Session and the District Magistrate/District Collector is empowered to direct the Public Prosecutor to prefer such Appeals.

32. As a matter of fact, sub-section (4) of Section 378 Cr.P.C. speaks of 'Filing of Appeal' in cases instituted upon complaints. However, the rider would be that the Complainant is to obtain necessary orders for the grant of Special Leave from the concerned Court, as per decision ***Subbiah Gowdar V. Kandaswamy Gounder reported in 1970 LW (CrI) 208***. Further, the State or the Complainant can prefer an Appeal under Section 378 Cr.P.C.

against an order of acquittal, as per decision ***Mohammad Daood Qureshi V. State, 1993 (1) Crimes 1037 at page 1039.***

Relevant Decisions:

33. At this stage, this Court cites the decision in ***Shantaram V. Dipak, reported in II (2012) BC 510***, whereby and whereunder, at paragraph 22 to 24, it is observed and held as under:

"22. There is no quarrel in the legal position that Sub-Section (4) of [Section 378](#) of the Code deals with such orders of acquittal passed in any cases instituted upon complaint and contemplates making an application to the High Court by the complainant in this behalf, seeking special leave to file an appeal from the order of acquittal, and upon grant of such special leave, the complainant may present such an appeal to the High Court, and it is apparently clear that this provision of [Section 378](#), sub section (4) of the Code is the exclusive provision which deals with the orders of acquittal passed in any

*cases instituted upon complaint. Hence, the present provision of **Section 378**, sub section (4) of the Code and amended proviso to **Section 372** of the Code operate in two different areas, separately.*

*23. Having the comprehensive view of the matter, and considering the above referred provisions of the Code and also considering rival submissions advanced by the learned Counsel for the parties, anxiously, and further considering the aforesaid judicial pronouncements and observations made therein, and more particularly considering the aims and objects of the legislature in introducing the proviso to **Section 372** of the Code, by way of amendment of 2009, I am of the view that insertion of the said proviso to **Section 372** of the Code, was focussed with the view to ensure that if the State does not prefer appeal against the order of acquittal, or if the leave is not granted and the appeal of the State is not entertained, a right has been conferred upon the victim, of preferring appeal against the order of acquittal since the*

*victim should not be left to helpless condition, which impliedly infers that there is no application of said amended proviso to **Section 372** of the Code to the cases instituted upon complaint as contemplated by sub-section (4) of **Section 378** of the Code, and more particularly, to the applications seeking leave to file appeals challenging the judgments and orders of acquittals for the offence punishable under **Section 138** of the NI Act and same do not come under the ambit and purview of the said amended proviso to **Section 372** of the Code.*

*24. Accordingly, the arguments advanced by the learned counsel for the respondents-accused, are not acceptable on the touchstone of the above enunciated legal position, and therefore, I am not inclined to accept the same, and hence, the question for determination in respect of maintainability of the present applications before this Court is answered in the affirmative, and resultantly, present applications under **Section 378(4)** of the Code, seeking leave to file appeals*

challenging the respective judgments and orders of acquittals for the offence punishable under [Section 138](#) of the Negotiable Instruments Act, are maintainable before this Court, since there is no application of the amended proviso of [Section 372](#) of the Code thereto, and hence, same be decided on their own merits. Stand over to 20.6.2011."

34. Further, this Court refers to the decision in ***Dharmveer Singh Tomar V. Shri Ramraj Singh Tomar reported in 2011 (1) Crimes 647*** wherein it is observed as under:

"In the present case, the points that arise for consideration are that (i) Whether in case of acquittal by Judicial Magistrate First Class, complainant can prefer appeal to Sessions Court under Section 372 of Code of Criminal Procedure: and (ii) Whether in case of acquittal by Judicial Magistrate First Class complainant can only prefer appeal before High Court under Section 378(4) of Code of Criminal Procedure and cannot prefer appeal under Section 372 of Code of

Criminal Procedure?

In order to examine the scope of Sections 372 and 378(4) of Code of Criminal Procedure and to specify the meaning of word "victim", which is explained in Section 2 (wa), these Sections need to be quoted, which reads as under:

372.No appeal to lie unless otherwise provided.- No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.

"2.Definitions.- In this Code, unless the context otherwise requires.-

(a) to (w)

(wa) "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which

the accused person has been charged and the expression "victim" includes his or her guardian or legal heir."

"378.Appeal in case of acquittal.-(1) to (3)....

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court."

(5) to (6)"

On a bare reading of Section 372 of Cr.P.C., it is crystal clear that this Section nowhere specifies that victim also includes complainant of complaint case. In Section 372 of Code of Criminal Procedure the word used is victim and in Section 378(4) of Code of Criminal Procedure the word used is complainant and this Section applies to complaint case."

35.Also, this Court worth recalls and recollects the decision of

the Hon'ble Supreme Court (Three Judge Bench), **Damodar S.Prabhu V. Sayed Babala H. reported in AIR 2010 Supreme Court 1907** wherein at paragraph 14, it is laid down as follows:

"14. It may be noted here that Section 143 of the Act makes an offence under Section 138 triable by a Judicial Magistrate First Class (JMFC). After trial, the progression of further legal proceedings would depend on whether there has been a conviction or an acquittal.

In the case of conviction, an appeal would lie to the Court of Sessions under Section 374(3)(a) of the CrPC; thereafter a Revision to the High Court under Section 397/401 of the CrPC and finally a petition before the Supreme Court, seeking special leave to appeal under 136 of the Constitution of India. Thus, in case of conviction there will be four levels of litigation.

In the case of acquittal by the JMFC, the complainant could appeal to the High Court under Section 378(4) of the CrPC, and thereafter for special leave to appeal to the Supreme Court under Article 136.

In such an instance, therefore, there will be three levels of proceedings.”

36.It is to be borne in mind that in the decision of the Hon'ble Supreme Court in ***Bhimappa Bassappa Bhu Sannavar V. Laxman Shivarayappa Samagouda and others, AIR 1970 Supreme Court 1153, at special page 1154***, whereby and whereunder, it is observed as follows:

'The word 'case' is not defined by the Code but its meaning is well understood in legal circles. In Criminal jurisdiction it means ordinarily a proceeding for the prosecution of a person alleged to have committed an offence. In other contexts the word may represent other kinds of proceedings. But in the context of Section 417 (3) it must mean a proceeding which at the results either in discharge, conviction, or acquittal of an accused person.'

The word 'complaint' has a wide meaning since it includes even an oral allegation. It may, therefore, be assumed that no form is prescribed which the complaint must taken. It may only be said

that there must be an allegation which prima facie discloses the commission of an offence with the necessary facts from the Magistrate to take action."

37. It is to be pointed out that in the decision ***Bhisam Prasad Bareth V. Dinesh Mahant and others, 2012 CRI.L.J. 2157 at special page 2159, at paragraphs 10 and 12***, it is observed as under:

"10. In the matter of Hirlal Nansa Bhavsar v. The State of Gujarat, reported in 1976 Cri LJ 84 the Full Bench of the Gujarat High Court while answering a reference made to it has held thus:

"The right of appeal is a substantive right which crystallizes at the date of institution of action and this right includes right to go in appeal to the superior Court. The forum to file the appeal is also thus determined as soon as the action is instituted. Till the case is instituted no litigant has any right to the forum in which the case can be instituted. In a criminal case this right to appeal and the right to file the appeal in the forum prescribed by law would precipitate at the date when the Court takes cognizance of an offence against the accused. It is perfectly competent for the legislature to affect this vested right retrospectively. The legislature may do so by making

express provision to that effect or by the disclosure of such an intention by necessary intendment. It is also competent to the legislature to save pending proceedings from operation of the new Act."

12.In the present case also, the impugned judgment has been passed on 18-3-2009, whereas the proviso to Section 372 of the Cr.P.C. was inserted on 31.12.2009, that is to say, long after date of incident i.e. 5-3-2008 and therefore, the proviso to Section 372 of the Cr.P.C. may not thus be applicable in the present case. This is so also, because the right of appeal is a substantive right and not a procedural right and such right vests from the day of the commencement of the proceedings and an appeal is nothing but a continuation of the proceedings. The forum to file an appeal is also determined as soon as the action is instituted."

38.In the decision of the Hon'ble Supreme Court in ***Satyapal Singh V. State of M.P. and others, (2015) 4 MLJ (Crl) 219 (SC)***, at special page 225, wherein at paragraphs 13 to 15, it is held as under:

"13.Thus, to conclude on the legal issue: "whether the appellant herein, being the father of the deceased, has statutory right to prefer an appeal to the High Court against the order of acquittal under proviso to [Section 372](#) of Cr.P.C. without obtaining the leave of the High Court as required under sub-Section (3) to [Section 378](#) of Cr.P.C.", this Court is of the view that the right of questioning the correctness of the judgment and order of acquittal by preferring an appeal to the High Court is conferred upon the victim including the legal heir and others, as defined under [Section 2\(wa\)](#) of Cr.P.C., under proviso to [Section 372](#), but only after obtaining the leave of the High Court as required under sub-Section (3) to [Section 378](#) of Cr.P.C. The High Court of M.P. has failed to deal with this important legal aspect of the matter while passing the impugned judgment and order.

14.Adverting to another contention of the learned counsel on behalf of the appellant regarding the failure on the part of the High Court to re- appreciate the

evidence it is clear from a perusal of the impugned judgment and order passed by the High Court that it has dealt with the appeal in a very cursory and casual manner, without adverting to the legal contentions and evidence on record. The High Court in a very mechanical way has stated that after a perusal of the evidence on record it found no reason to interfere with the decision of the trial court as the prosecution has failed to establish the charges levelled against the accused beyond reasonable doubt and it has dismissed the appeal by passing a cryptic order. This Court is of the view that the High Court, being the Appellate Court, has to exercise its appellate jurisdiction keeping in view the serious nature of the charges levelled against the accused. The High Court has failed to exercise its appellate jurisdiction properly in the appeal filed by the appellant against the judgment and order of acquittal passed by the trial court.

15.Hence, the impugned judgment and order of the High Court is not sustainable in law and the same is liable

to be set aside by this Court and the case is required to be remanded to the High Court to consider for grant of leave to file an appeal by the appellant as required under sub-Section (3) to [Section 378](#) of Cr.P.C. and thereafter proceed in the matter."

39. In the decision ***K.Damodaran V. V.K.Sippi, AIR 1960 Kerala 389 (V 47 C 179)***, it is observed as under:

"The words "in any case instituted upon complaint" appearing in S. 417(3) mean "in any case of which the Court has taken cognizance upon complaint" and "Complaint" does not include a police report.

The grant of special leave under S.417(3) does not amount to a decision in the appeal that the appeal is competent. A complainant may present an appeal to the High Court under S.417(3) only if the case was instituted upon complaint, and therefore it is incumbent on the appellate Court before hearing the appeal, to decide whether it is such a case.

The admission of an appeal does not preclude a party from questioning, or the Court from considering, whether it lies at all."

Cannon of Construction and Interpretation of Statues:

40. In this connection, this Court significantly points out that in the decision ***Cartledge V. E.Jopling & Sons Limited, (1963) A.C. 758***, it is observed that 'Where by the use of clear and unequivocal language capable of one meaning, anything is indicated by Legislature, it must be enforced, however harsh or absurd or contrary to common sense, the result may be'. Further, in the decision ***Whitehead V. James Stott Limited, 1949 1 KB 358***, it is held that 'words are not to be construed contrary to their meaning as embracing or excluding cases merely because no good reason appears why should not be embraced or excluded.

41. After all, the duty of Court is to expound the Law as it stands and to 'Leave the Remedy' (if one be resolved upon) to others as per decision ***Sutters V. Briggs, 1922 (1) AC 1 at page 8 (Per Lord Birkenhead)***.

42. Apart from that, according to *Lord Evershed MR*, the length and detail of modern legislation has undoubtedly re-enforced the claim of literal construction as the only safe rule (Maxwell 11th Edn. Page vi).

43. Moreover, consent cannot confer jurisdiction, as per decision ***Heyting V. Dupont, (1963) 1 W.L.R. 1192 (Per Blowman J.)***. Of course, in Law, there can be no waiver of a statutory requirement. A Prisoner cannot consent to waive what the Law requires in the course of his trial, ***Att. Gen. For New Southwheels V. Bertrand, (1867) L.R. 1 P.C. at page 520***. *Privatorum conventio juri Publico non derogat, Dig.50.17.45*. In short, it is for the concerned person, who is to be benefited by a statutory rule in question is to waive the performance of it, and it is not open to another individual to insist that the rule be observed. In the Abstract General words like all others, receive their full and natural meaning and the Courts will not impose on them limitations not called for by the sentence or objects of the enactment, as per decision ***Roe V. Hemmings, (1951) 1 K.B. 676***.

Some Case Laws on Interpretation of Statute:

44. Coming to the aspect of interpretation, this Court refers to the decision of the Hon'ble Supreme Court in ***Reserve Bank of India V. Peerless General Finance and Investment Co. Ltd., and others, AIR 1987 SC 1023*** wherein it is observed as under:

"33. Interpretation must depend on the

text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when the object and purpose of its enactment is known. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such context its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses the court must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be

construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

45. That apart, in the decision ***South Asia Industries Private Limited V. S. Saroop Singh and others, AIR 1966 SC 346***, it was held that 'the object of interpreting a statute is to ascertain the intention of the Legislature enacting it'.

46. In the decision ***Mohammad Sher Khan V. Raja Seth Swami Daval reported in AIR 1922 Privy Council 17***, it is held that '***one section a statute cannot be used to defeat another section unless it is impossible to effect a reconciliation between them***'.

47. In the decision of the Hon'ble Supreme Court in ***British Airways Plc. V. Union of India and others, AIR 2002 SC 391***, it is observed as follows:

"7. While interpreting a statute the court should try to sustain its validity and give such meaning to the provisions

which advance the object sought to be achieved by the enactment. The court cannot approach the enactment with a view to pick holes or to search for defects of drafting which make its working impossible. It is a cardinal principle of construction of a statute that effort should be made in construing the different provisions so that each provision will have its play and in the event of any conflict a harmonious construction should be given. The well-known principle of harmonious construction is that effect shall be given to all the provisions and for that any provision of the statute should be construed with reference to the other provisions so as to make it workable. A particular provision cannot be picked up and interpreted to defeat another provision made in that behalf under the statute. It is the duty of the court to make such construction of a statute which shall suppress the mischief and advance the remedy. While interpreting a statute the courts are required to keep in mind the consequences which are likely to flow upon the intended interpretation."

48. In the decision of the Hon'ble Supreme Court in ***Union of India V. Elohinstone Spinning and Weaving Co. Ltd., and others, AIR 2001 SC 724***, the Hon'ble Supreme Court has observed as follows:

"The duty of Judges is to expound and not to legislate is a fundamental rule. There is no doubt a marginal area in which the Courts mould or creatively interpret legislation and they are thus finishers, refiners and polishers of legislation which comes to them in a state requiring varying degrees of further proceeding (See: Corocraft Ltd. V. Pan American Airways Inc. 1968 (3) WLR 714; State of Haryana v. Sampuran Singh, 1975 (20 SCC 810: AIR 1975 Sc 1952). But by no stretch of imagination a Judge is entitled to add something more than what is there in the Statute by way of a supposed intention of the legislature. It is, therefore, a cardinal principle of construction of statute that the true or legal meaning of an enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy

to which the enactment is directed.”

Inapplicability of Section 372 Cr.P.C.:

49. In the present case, the impugned Judgment was passed by the trial Court on 30.12.2015 in C.C.No.77 of 2007. However, the proviso to Section 372 Cr.P.C. came into effect on 31.12.2009 viz., long after the date of issuance of Cheque dated 20.02.2006. In fact, the proviso to Section 372 Cr.P.C. is not retroactive in operation, as per decision of the Hon'ble Supreme Court in ***National Commission of Women V. State of Delhi, (2010) 12 SCC 599***. Hence, the proviso to Section 372 Cr.P.C. is not applicable to the facts of the present case, in the considered opinion of this Court. Further, Section 372 Cr.P.C. does not lay down the procedure as to how, in what manner and within which time an Appeal is to be filed.

50. As a matter of fact, Section 378(4) Cr.P.C. places no restriction either expressly or impliedly on the Complainant. Even the decision [Three Judge Bench] of the Hon'ble Supreme Court reported in ***AIR 2010 Supreme Court 1907 (cited supra)*** at paragraph 14, in a crystalline fashion speaks of 'preferring of an

Appeal by the Complainant in case of acquittal by JMFC before the High Court under Section 378(4) Cr.P.C. and thereafter, for Special Leave to Appeal to Supreme Court under Article 136 of the Constitution of India'. It is an axiomatic principle in Law that as per Article 141 of the Constitution of India, the Law declared by the Hon'ble Supreme Court is binding on all Courts and the said decision of the Hon'ble Supreme Court still holds the field as on date.

51. In view of the foregoing detailed discussions and inasmuch as the term 'Victim' as per Section 372 Cr.P.C. does not in any way erase the ingredients of Section 378(4) Cr.P.C. [pertaining to filing of an Appeal against an order of acquittal in any case instituted upon complaint], (especially, in the absence of definition of 'Victim' and 'Complainant' under the Negotiable Instruments Act, 1881), this Court comes to a consequent conclusion that a Complainant, who is a 'Payee' under Section 7 of the Act or a 'Holder in Due Course' under Section 9 of the Act, is entitled to seek 'Leave' under Section 378(4) Cr.P.C. and filing of Miscellaneous Application, in this regard, seeking prior permission

from the High Court is *per se* maintainable in Law. Viewed in that perspective, if an acquittal order is passed 'in any case instituted upon a complaint', an Application filed by a Complainant under Section 378(4) Cr.P.C. seeking 'Grant of Leave' before High Court is maintainable.

Conclusion:

52.On a careful consideration of the contentions advanced on behalf of the Petitioner/Complainant, this Court is of the considered view that the order of dismissing the complaint in C.C.No.77 of 2007 passed by the trial Court on 30.12.2015 needs to be examined by this Court in a threadbare fashion with a view to find out whether there are *prima facie* sufficiency of cause/materials on the side of the Petitioner/Complainant. For that purpose, this Court grants Leave to the Petitioner/Appellant/Complainant.

53.In fine, the Crl.O.P.No.24235 of 2016 is allowed.

23.02.2017

Index : Yes / No

(½)

Internet : Yes / No

Sgl

To

The Judicial Magistrate No.1,
Krishnagiri.

M.VENUGOPAL.J,

Sgl

Crl.O.P.No.24235 of 2016 in
Crl.A.Sr.No.20030 of 2016

24.02.2017
<http://www.judis.nic.in>